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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,367	03/19/2004	Alan B. Auerbach	13768.494	9225
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60 EAST SOUTH TEMPLE			ART UNIT	PAPER NUMBER
SALT LAKE CITY, UT 84111			2194	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/804,367	AUERBACH ET AL.
	Examiner	Art Unit
	PAUL R. FATEHI	2194

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12/20/2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-27 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. In Amendment filed 12/20/2007, Applicant amended claims 1-3, 5-12, 14-21 and 23-25. Claims 26-27 are New. Claims 1-27 are pending in this application.

Claim Objections

2. Claims 16 and 27 are objected to because of the following informalities: Claim 16, line 2 recites "storing the least one item" and should be changed to "storing the at least one item". Claim 27, line 1 recites "wherein the an act of" and should be changed to "wherein the act of". Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-5, 14, 18, 21 and 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alur et al (US 2005/0015641) [hereafter Alur], in view of Wenocur et al (US 2002/0178360) [hereafter Wenocur].**

5. As per claim 1, Alur discloses an act of executing an application at the computer system (Alur, Par. 76, executing an application on a computer); an act of generating

metric data related to the functionality of the application during execution of the application, the generated metric data including at least one of performance monitoring data and event log data for the application at the computer system (Alur, Par. 76 & 87, generating metrics related to execution of application where metrics are for performance monitoring and analysis); metric data related to the functionality of the application (Alur, Par. 76, metrics describe the functionality of the application); an act of storing the metric data relating to the functionality of the application at the computer system (Alur, Par. 124, storing / inputting metric data into the computer system).

6. Alur does not explicitly disclose an act of accessing a manifest that indicates a subset of the generated metric data is to be packaged for delivery; an act of sending schema-based package start data to cause the of metric data to be packaged for delivery to the server, the schema-based package start command including elements and attributes of a vocabulary define in a selection schema, the selection schema defining how to indicate that subsets of performance monitoring data and subsets event log data are to be packaged; an act of sending a package send command to the quality metric module to cause the packaged subset of generated metric data to be delivered to the server.

7. Whereas, Wenocur discloses accessing a manifest that indicates a subset of the generated; metric data is to be packaged for delivery (Wenocur, Par. 73, In 1-7, accessing file giving overview); an act of sending schema-based package start data to

cause the subset of metric data to be packaged (Wenocur, Par. 1040, schema-based package); an act of sending a package send command to cause a packaged subset of generated metric data to be delivered to the server(Wenocur, Par. 1043, sending package).

8. One having ordinary skill in the art, at the time the invention was made, would have modified the method of Alur by the method of accessing a manifest for package delivery as taught by Wenocur, in order to enable the method to quickly determine what action should be taken with the metrics data and then to take indicated action in an efficient manner.

9. As per claim 2, the teachings of Alur in view of Wenocur substantially discloses the invention as claimed and further discloses the act of generating metric data comprises an act of an operating system generating metric data related to the functionality of the application (Wenocur, Par. 28, In 1-4, operating system).

10. As per claim 3, the teachings of Alur in view of Wenocur substantially discloses the invention as claimed and further discloses the act of generating metric data comprises an act of the application generating metric data related to the functionality of the application (Alur, Par 76, In 1-4, related to application).

11. As per claim 4, the teaching of Alur in view of Wenocur substantially discloses the invention as claimed but does not explicitly disclose the application accessing a dynamic link library. One having ordinary skill in the art, at the time the invention was made, would have recognized that a DLL file is commonly used as a manifest since it can contain information about packaged files. Therefore, it would have been an obvious design choice to access a DLL file as an act of accessing a manifest.

12. As per claim 5, the teachings of Alur in view of Wenocur substantially discloses the invention as claimed and further disclose that an act of accessing a manifest that indicates a subset of performance monitoring data related to the functionality of the application is to be packaged for delivery (Wenocur, Par. 705, delivery).

13. As per claim 14, the teachings of Alur in view of Wenocur substantially discloses the invention as claimed and further discloses a computer system that includes a quality metric module, the quality metric module configured to package metric data for delivery, a method for packaging specified metric data related to the functionality of the application; an act of receiving schema-based package start data, the schema-based package start data indicating that a subset of generated metric data is to be packaged for delivery (Wenocur, Par. 73, In 1-7, delivery); an act of accessing the subset of generated metric data related to the functionality of the application from the computer system storage (Wenocur, Par 73, In 1-7, accessing); an act packaging the subset of generated metric data related to the functionality of the application according to a

packaging schema defining elements and attributes used at the server (Wenocur, Par. 1040, packaging schema); an act of receiving a package send command from the application (Wenocur, Par 1043, receiving package); and an act of sending the packaged subset of metric data related to the functionality of the application to the server in response to the package send command (Wenocur, Par 1040, packaging).

14. As per claim 18, the teachings of Alur in view of Wenocur substantially disclose the invention as claimed and further disclose the act of accessing the subset of generated metric data from a data point store (Alur, Par. 124, storing metric data).

15. As per claim 21, it is rejected under the same reasons as claim 14 above.

16. As per claim 23, it is rejected under the same reasons as claim 14 above.

17. As per claim 24, it is an apparatus claim with the same limitations as claims 1 and 14 and is rejected under the same reasons as claims 1 and 14 above.

18. As per claim 25, it is an apparatus claim with the same limitations as claims 14 and is rejected under the same reasons as claims 14 above.

19. As per claim 26, the teachings of Alur in view of Wenocur substantially disclose the invention as claimed and further disclose the act of accessing a manifest that

indicates a subset of the generated metric data related to the functionality of the application is to be packaged comprises an act of accessing a manifest specifically selected by a developer to configure the subset of generated metric data for use in studying the functionality of the application (Wenocur, Par. 73, In 1-7, accessing file giving directional overview, Par. 1040-1043, schema-based package and sending package).

20. As per claim 27, the teachings of Alur in view of Wenocur substantially disclose the invention as claimed and further disclose the act of receiving schema-based package start data from an application, the schema-based package start data indicating that a subset of generated metric data related to the functionality of the application is to be packaged comprises an act of receiving schema-based package start data based on a manifest specifically selected by a developer to configure the subset of generated metric data for use in studying the functionality of the application (Wenocur, Par. 73, In 1-7, accessing file giving directional overview, Par. 1040-1043, schema-based package and sending package).

21. Claims 6-7, 13, 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alur, in view of Wenocur and further in view of Eastep et al (US 6,732,625) [hereafter Eastep].

22. As per claim 6-7, the teachings of Alur as modified by Wenocur substantially disclose the invention as claimed but do not explicitly disclose accessing a manifest that indicates a subset of event log data is to be packaged for delivery; accessing a manifest that indicates statistical operations that are to be performed on generated metric data related to the functionality of the application.

23. Whereas, Eastep teaches accessing a manifest that indicates a subset of event log data is to be packaged for delivery; accessing a manifest that indicates statistical operations that are to be performed on generated metric data (see Fig. 28 & col. 43, ln 43-53, event log... statistical operations).

24. One having ordinary skill in the art, at the time the invention was made, would have modified the teachings of Alur in view of Wenocur to include accessing a manifest that includes event log data and statistical operations as taught by Eastep, in order to add features that would make the system more comprehensive for tracing and debugging and better informing the user with comprehensive metrics.

25. As per claim 13, the teachings of Alur in view of Wenocur and further in view of Eastep substantially discloses the invention as claimed and further discloses that the act of sending a package send command comprises an act of sending a dispose flag that indicates whether or not a corresponding package is to be retained after the package is queued for delivery (Eastep, see delivery flags and queue).

26. As per claim 19, the teachings of Alur in view of Wenocur and further in view of Eastep substantially disclose the invention as claimed and further disclose an act of performing a statistical operation based on the accessed subset of metric data (Eastep, col. 43, ln 43-53, statistical).

27. As per claim 22, it is rejected under the same reasons as claim 13 above.

28. Claims 8-10, 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alur, in view of Wenocur and further in view of Mullins et al (US 2003/0208505) [hereafter Mullins].

29. As per claim 8, the teachings of Alur as modified by Wenocur substantially discloses the invention as claimed and but does not explicitly disclose an act of converting instructions included in the accessed manifest to schema-based package start data, the schema-based start data being defined in accordance with the selection schema.

30. Whereas, Mullins teaches an act of converting instructions included in the accessed manifest to schema-based package start data, the schema-based start data being defined in accordance with a selection schema (Par. 47, converting). One having ordinary skill in the art, at the time the invention was made, would have modified the

teachings of Alur in view of Wenocur to include instruction conversion as taught by Mullins in order to transmit data across the system in a standardized format.

31. As per claim 9-10, the teachings of Alur in view of Wenocur substantially discloses the invention as claimed and further discloses the act of converting instructions included in the accessed manifest to schema-based package start data comprises an act of converting in instructions included in the accessed manifest into XML instructions; an act of sending XML instructions to a quality metric module to indicate to the quality metric module that a subset of the generated metric data related to the functionality of the application is to be packaged for delivery (Mullins, see Par. 47, XML conversions).
32. As per claim 15, the teachings of Alur in view of Wenocur substantially discloses the invention as claimed and further discloses the act of receiving schema-based package start data comprises an act of receiving XML instructions that indicated a subset of generated metric data is to be packaged for delivery, the XML instructions defined in accordance with a selection schema (Mullins, see Par. 47, XML delivery and conversions).
33. As per claim 20, it is rejected under the same reasons as claims 8-10 and 15 above.

34. Claims 11-12 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alur, in view of Wenocur and further in view of Staveley et al (US 6,973,491) [hereafter Staveley].

35. As per claim 11-12, the teachings of Alur in view of Wenocur substantially discloses the invention as claimed but does not explicitly disclose an act of sending a sample command to the quality metric module, the sample command indicating that the quality metric module is to sample at least one item or event represented in the accessed manifest; sending a sample command comprises an act of sending a sample command that indicates that the metric data represented in the accessed manifest is to be sampled.

36. Whereas, Staveley teaches sending a sample command, the sample command indicating that a quality metric module is to sample at least one item or event represented in the accessed manifest; sending a sample command comprises an act of sending a sample command that indicates that the metric data represented in the accessed manifest is to be sampled (see Staveley, Detailed Description of Embodiments, Par. 91, sample configuration for testing).

37. One having ordinary skill in the art, at the time the invention was made, would have modified the teachings of Alur in view of Wenocur to include the act of sending a

sample command as taught by Staveley in order to effectively test the performance of the system.

38. As per claim 16-17, the teachings of Alur in view of Wenocur, and further in view of Staveley substantially disclose the invention as further disclose receiving a sample command (Staveley, Detailed Embodiments, Par. 91, sample); and an act of retrieving at least one item or event from system memory and storing the least one item or event generated metric data in a data point store (Alur, Par. 124, storing into computer system).

Response to Arguments

39. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection. Specifically, Applicant has argued that the newly added elements in the Amended claims are not disclosed by the prior art. Examiner has performed a new search and identified art that discloses all the elements of the claimed invention.

Conclusion

40. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

41. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

42. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL R. FATEHI whose telephone number is (571)270-1407. The examiner can normally be reached on M-F 10:30AM-7PM EST.

43. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571)272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

44. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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